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No. 04-864

IN THE

Supreme Court of the United States

HENRY LEE "LEROY" PICKETT, *et al.*,
Petitioners,

v.

TYSON FRESH MEATS, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

First. Whether the rule of reason analysis, and its requirements of (1) a detailed analysis of any anticompetitive business practice within an industry and (2) weighing the anticompetitive practice against any procompetitive benefit derived from that practice, remains valid or, as the Eleventh Circuit—the lone outlier on this question—determined, the rule of reason may be replaced with an inverted quick look analysis that approves anticompetitive practices so long as *any* procompetitive benefit derives from an anticompetitive practice.

Second. Whether, as an issue of first impression that will resolve a deepening split among the circuits, a private plaintiff suing under section 202 of the Packers and Stockyards Act, 7 U.S.C. § 192, must show that a challenged practice has an adverse effect on competition or—consistent with the language of the statute—only that the practice was unfair, intended to manipulate or control prices, or has the effect of manipulating or controlling prices.

CORPORATE DISCLOSURE STATEMENT

The Petitioners appealing from the ruling of the United States Court of Appeals for the Eleventh Circuit are Henry Lee Pickett, Mike Callicrate, Pat Goggins, Johnny Smith, Christopher J. Abbott, and W. J. Rothwell Ranch Company and the certified class that they represent. No publicly held corporation has an interest requiring disclosure under Supreme Court Rule 29.6.

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OPINIONS BELOW

The opinion of the Eleventh Circuit (Pet. App. 1a) was reported at 420 F.3d 1272 (11th Cir. 2005). The opinion of the district court (Pet. App. 28a) was reported at 315 F. Supp. 2d 1172 (M.D. Ala. 2004).

JURISDICTION

The court of appeals issued its opinion on August 16, 2005. Pet. App. 1a. It denied Pickett's timely petition for rehearing *en banc* on October 7, 2005. This Court has jurisdiction under 28 U.S.C. section 1254(1).

STATUTORY PROVISION INVOLVED

Section 202 of the Packers and Stockyards Act (PSA) relates to the second question presented and states:

> It shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:
>
> (a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or
>
> (b) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect; or
>
> (c) Sell or otherwise transfer to or for any other packer, swine contractor, or any live poultry dealer, or buy or otherwise receive from or for any other packer, swine contractor, or any live poultry dealer, any article for the purpose or with the effect of apportioning the supply between any such persons, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly; or
>
> (d) Sell or otherwise transfer to or for any other person, or buy or otherwise receive from or for any other person, any article for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or
>
> (e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce; or
>
> (f) Conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on